# IN THE UNITED STATES DISTRICT COURT
## FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ALPHONZA L.P. THOMAS-BEY,           )
                                    )
                    Petitioner,     )
                                    )
        v.                          )        1:23CV35
                                    )
JOSH STINE,                         )
                                    )
                    Respondent.     )

## RECOMMENDATION AND ORDER
## OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a state prisoner, submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with the five-dollar filing fee. This Petition cannot be further processed because court records reveal that Petitioner already attacked the same conviction and sentence in a previous § 2254 petition (Case Number 1:16CV524). Consequently, Petitioner must apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this Court to consider the current Petition, as required by 28 U.S.C. § 2244(b)(3)(A). This Court cannot consider the Petition unless that authorization first issues. Petitioner does not claim that he received authorization to file a successive Petition. Because of this pleading failure, the Petition should be dismissed. The Clerk will return the filing fee to Petitioner and *in forma pauperis* status will be granted for the sole purpose of entering this Recommendation and Order.

Petitioner has also filed a number of Motions, including a Motion for Summary Judgment [Doc. #3], and Motion to Correct a Clerical Mistake [Doc. #4], Motions to Amend [Doc. #5, #8, #9, #10, #11], an Affidavit [Doc. #7], and a Motion to Review all cases [Doc. #6]. Because Petitioner has not obtained authorization to file a second or successive Petition, the Motion for Summary Judgment should be denied. With respect to the Motion to Correct Clerical Mistake [Doc. #4], that Motion relates to Petitioner's contention that certain of his submissions should have been filed in his earlier case, 1:22CV271, and that issue has already been addressed and resolved by the District Judge by Order in that case, and the Motion in this case is therefore moot. Similarly, in his Motions to Amend, Petitioner seeks to amend to update the cross-references and citations in his various case numbers, but those amendments would not change or affect the issue or the conclusion as to the present case. To the extent Petitioner seeks to consolidate this habeas case with his § 1983 cases, those are completely separate cases and that request was therefore denied by the District Judge by Order in 1:22CV271. Therefore, all of these Motions in the present case should likewise be denied.

IT IS THEREFORE RECOMMENDED that Petitioner's Motions [Doc. #3, #4, #5, #6, #8, #9, #10, #11] be denied and that the Petition be dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Petition as is required by 28 U.S.C. § 2244 and that, there being no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability not issue.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Recommendation and Order.

IT IS FURTHER ORDERED that the Clerk shall return the five-dollar filing fee to Petitioner and send Petitioner a copy of this Recommendation and Order, instruction forms for filing § 2254 petitions in this Court and for filing a Motion for Authorization in the United States Court of Appeals for the Fourth Circuit, an application to proceed *in forma pauperis* (upon request), and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

This, the 7th day of June, 2023.

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   /s/ Joi Elizabeth Peake   
United States Magistrate Judge

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